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IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10461 of 2005

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Dr.Uma Shankar Chaturvedi, son of Dr. Parasnath Chaturvedi, resident of Kishori Bhawan, Pirmohani, P.S.-Kadamkuan, District-Patna. .... Petitioner.

Versus

1. The State of Bihar through the Secretary, Department of Medical Education, Family Welfare and Indigenous Medicine, Government of Bihar, Patna.
2. Additional Secretary, Department of Medical Education, Family Welfare and Indigenous Medicine, Government of Bihar, Patna.
3. Deputy Secretary, Department of Medical Education, Family Welfare and Indigenous Medicine, Government of Bihar, Patna.
4. Director, Indigenous Medicine, Department of Medical Education, Family Welfare and Indigenous Medicine, Government of Bihar, Patna.
5. Dr. Devbrat Narayan Singh, Reader, Government Ayurvedic College, Patna.
6. Dr. Dineshwar Prasad, Lecturer, Government Ayurvedic College, Patna.

.... Respondents.

WITH

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Civil Writ Jurisdiction Case No. 5929 of 2005

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Dr. Deovrat Narayan Singh, son of Late Udit Narayan Singh, resident of Mohalla-Bhojpur Colony, Ashok Nagar, Road No.8, Kankarbagh, Patna-20.

.... Petitioner.

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Commissioner-cum-Secretary, Department of Finance, Government of Bihar, Old Secretariat, Patna.
4. The Secretary, Department of (Medical Education Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New Secretariat, Patna.
5. The Joint Secretary, Department of (Medical Education, Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New

Secretariat, Patna.

6. The Deputy Secretary, Department of (Medical Education, Family Welfare & Indigenous System of Medicine) Health, Government of Bihar, New Secretariat, Patna.
7. The Director, Indigenous System of Medicine, Department of (M.E.F.W. & ISM) Health, Government of Bihar, New Secretariat, Patna.

.... Respondents.

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WITH

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Civil Writ Jurisdiction Case No. 11257 of 2005

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Dr. Saroj Kumar Mishra, son of Late Mathuresh Mishra, resident of Mohalla-Mungeriganj, within the Municipality of Begusarai, P.S.-Begusarai, District-Begusarai. .... Petitioner.

Versus

1. The State of Bihar through the Commissioner, Health Department, Government of Bihar, New Secretariat, Patna.
2. The Director, Health Services (Indigenous), Bihar, Patna.
3. The Principal, Government of Ayodhya Shiv Kumari Ayurvedic College, Begusarai.
4. Dr. Sumeshwar Singh, son of Late Mangru Singh, resident of village and P.O.-Penar, P.S.-Nokha, District-Rohtas.
5. Dr. Binod Pathak, Reader-cum-Incharge, Principal, Government Ayodhya Shiv Kumari Ayurvedic College, Begusarai. .... Respondents.

WITH

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Civil Writ Jurisdiction Case No. 13770 of 2008

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Dr. Deovrat Narayan Singh, son of Late Udit Narayan Singh, resident of Mohalla-Bhojpur Colony, Ashok Nagar, Road No.8, Kankarbagh, Patna-20.

.... Petitioner.

Versus

1. The State of Bihar through its Chief Secretary, Patna.
2. The Chief Secretary, Government of Bihar, Patna.

3. The Principal Secretary, Department of Health, Government of Bihar, New Secretariat, Patna.
4. The Director, Directorate of Health (Indigenous System of Medicine), Government of Bihar, Patna.
5. The Union of India through the Ministry of Health & Family Welfare, Department of Aayush, New Delhi-110001.
6. The Central Council of Indian Medicine through its Secretary, 65-66 Institutional Area, Janakpuri, New Delhi-110058. .... Respondents.

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Appearance :

For the Petitioners : Mr. Rajendra Narayan, Sr. Adv.
Mr. J.P. Kishore, Adv.

For the Respondents : M/s Uma Shankar Chaturvedi, Brajesh Kumar, Arvind Kumar and Mrinalini Kumari, Advocates.

For the Union of India : Mr. Sujeet Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

C.A.V. JUDGMENT

Date: 14-01-2015

These four writ petitions have been filed at different times by different doctors of Ayurvedic Medicine and have a common issue. The issue is with regard to their promotions as teachers in Ayurvedic Medical Science in Government Ayurvedic Medical Colleges. The common question is with regard to the interpretation of the relevant clauses of the Indian Medicine Central Council (Minimum Standard of Education in Indian Medicine) Regulation, 1986, as amended from time to time, especially in 1989 and the effect of its further amendment in the

year 2012. These regulations are made with reference to Section-22 read with Section-36 of the India Medicine Central Council Act, 1970 (Parliamentary Act No.48 of 1970). In these four writ petitions, though the question of law involved is of general application for all Ayurvedic doctors, there are six doctors involved who are divided in two groups. One consists of two doctors, who are mere graduates, having the degree of Bachelor in Ayurvedic Medicine Science (BAMS). They are Dr. Deovrat Narayan Singh and Dr. Saroj Kumar Mishra. The second group consists of four doctors who have Post Graduate degrees in Ayurvedic Medical Science i.e. MD (Ay.) MS (Doctorate in Ayurvedic Medical Science). They are Dr. Dineshwar Prasad, Dr. Sumeshwar Singh, Dr. Binod Pathak and Dr. Uma Shankar Chaturvedi, for the sake of brevity the two sets of doctors aforesaid would be referred to Non PG doctors and PG doctors.

2. The contention of the PG doctors would be that after the amendment to the regulations in 1989, no doctor having no PG educational qualification, however senior they may be, could not be promoted to the post of Reader or Professor as the amendment to the regulations in 1989 clearly provided the educational qualification for the post of Reader and Professor to be minimum Post Graduate. The non PG doctors contend that

they having been recruited in the teaching branch prior to 1989 amendment to the regulations, the minimum educational qualification provided for the purpose of Reader and Professor by the 1989 regulation, would not apply to them and their promotion would be dependent upon their seniority. They are entitled to be promoted to the post of Reader and Professor notwithstanding that they not having acquired any Post Graduate degree in Ayurvedic Medicine. It is the correctness of the opposite stands taken by the two groups that has to be seen.

3. Mr. Rajendra Narayan, learned senior counsel, with his usual ability and persuasion, has tried to impress upon the Court that the amendment to the regulations prescribing minimum educational qualification for the post of Reader/Professor as made in 1989, if read with relevant part of the amendment to the regulations as made in the year 2012, would clearly show that the amendment is prospective in its application. Meaning thereby it would have no application to persons who were already Lecturers prior to 1989 amendment without Post Graduate degree. They would, accordingly, be entitled to promotion to the post of Reader and Professors depending upon their seniority and of course availability of posts. To support this contention, he has relied upon the series of circulars issued by the Central Government, the

Central Council for Indian Medicine, the State of Bihar and consequential steps taken pursuant thereto. In fairness to the learned senior counsel, it must be noted that he has brought to the notice of the Court certain orders of this Court to buttress his submissions, which would be appropriately dealt in course of this judgment.

4. Before proceeding, I would like to clear a general misconception. In absence of statutory rules it is open to the executive to provide various qualifications and conditions for appointment and promotion by executive instructions and circulars including clarificatory circulars, but, once statutory rules have been framed in respect of any subject then so far as those subjects/ matters are concerned, the power of the executive to explain by executive instructions is taken away. In case of any dispute with regard to interpretation of any part of any statutory rule, ultimately, it would have to be decided by Courts and not by executive instructions. The reason is simple. Once statutory rules are framed then it has to have one and only one meaning which can only be authoritatively laid down, in case of any dispute, by a Court of competent jurisdiction. The executive may have varying interpretation under varying circumstances. For example, in the present case, once the 1989 amendment to the regulations, which

are statutory in nature, having been framed, issued and enforced with reference to Section-22 read with Section-36 of the Act, the Central Council on 03.06.1991 issued circular that PG is not relevant for pre 01.07.1989 appointees. On 19.06.1991 the State Government took a contrary stand. Then on 29.03.1996 State revised its stand in line with Central Council. Then on 28.04.1997 Government of India disagreed with Central Council and again it reiterated its stand on 01.02.2006 but suddenly on 05.03.2008 the Government of India changed its stand and fell in line with the Central Council. The statute remained the same but the stand of the executive vacillated. This is why ultimately it is the authoritative pronouncement by the Court upon the interpretation of the statute that would bind the parties including the executive and not vice-versa.

5. I may note that for the purposes of these writ petitions and the issue involved therein, I do not propose to go into minute details of facts because once the law is settled it would be upon the authorities to give effect thereto appropriate to the facts of individual cases.

6. Dr. Deovrat Narayan Singh has the non PG qualification of Bachelor of Ayurvedic Medical Science (BAMS). He joined the service under the State Government as Ayurvedic

Medical Officer at Pakur on or about 22.06.1976. He came in at Government Ayurvedic College as Ayurvedic Medical Officer on 10.10.1982 and then became a Demonstrator in the Government Ayurvedic Medical College, Patna with effect from 01.09.1982. He became Lecturer on 19.07.1988 at Patna and was promoted to the post of Reader with effect from 13.09.2004, which was later cancelled by State and stayed by this Court. He, inter alia, seeks promotion as Reader and further to the post of Professor, being the senior most teachers with effect from 01.10.1999. The group of PG doctors contends that as on the date of notification, amending the regulations in 1989, he was Lecturer and did not ever acquire Post Graduate qualifications, he is not competent to be considered for promotion to the post of Reader much less Professor much less on the basis of his seniority.

7. Dr. Saroj Kumar Mishra is also a BAMS i.e. non PG. He was appointed by the State Government on or about 30.06.1975 as a Vaidya (Ayurved doctor). He later became Demonstrator at Government Ayurvedic College, Begusarai on or about 28.08.1982 and was appointed as a Lecturer on or about 24.01.1991 allegedly upon abolition of post to Demonstrator and merging it with that of Lecturer where he is stuck and he seeks promotion to the post of Reader and Professor further upon his

seniority.

8. Dr. Dineshwar Prasad obtained Post Graduate qualification being MD in Ayurvedic Medical Science in the year 1981 and joined the State Government service through selection process conducted by the Bihar Public Service Commission on 10.06.1986 as Ayurvedic Medical Officer in the Welfare Department. Later, through the Bihar Public Service Commission, he became Ayurvedic Medical Officer in the Health Department on or about 01.04.1987 and then joined as Lecturer in Government Ayurvedic College on or about 31.07.1990. He has grievance with regard to denial of his promotion and challenges promotion to non PG teachers.

9. Dr. Sumeshwar Singh obtained Post Graduate qualification of MD in Ayurvedic Science in the year 1991, where after he joined as Ayurvedic Medical Officer in the State Government and then on or about 16.05.1997 joined as Lecturer in Government Ayurvedic College and was promoted to the post of Reader on or about 06.06.2007. His promotion is in question and he questions the promotion of others.

10. Dr. Binod Pathak obtained Post Graduate qualification of MD in Ayurvedic Science in the year 1989 and joined the State Government service in the year 1994 as Medical

Officer (Ayurved) on or about 29.05.1997. He joined at Government Ayurvedic Medical College at Patna as Lecturer and was later transferred to Begusarai. On 06.06.2007 he was promoted to the post of Reader and then with effect from 17.07.2010 he has been Incharge Principal of Government Ayurvedic College at Begusarai. His promotion is under challenge and he challenges the promotion given to others.

11. Dr. Uma Shankar Chaturvedi was a Graduate when he joined as Medical Officer under the State Government in the year 1987. In 1990 he enhanced his educational qualification by obtaining Post Graduate degree in Ayurvedic Medical Science and joined as Lecturer in Government Ayurvedic College on 07.12.1990. He seeks his promotion as Reader and then as Professor upon his seniority by challenging the promotion to others.

12. From these basic facts as noted above, three things are clear. First, Dr. Deovrat Narayan Singh became the Lecturer on or about 19.07.1988 prior to the 1989 amendments to the regulations and Dr. Saroj Kumar Mishra became Lecturer from Demonstrator on 24.01.1991, after the 1989 amendment to the regulations. Both of whom never acquired Post Graduate qualifications in Ayurvedic Medical Science and the third the

other four Post Graduate teachers joined as Lecturers with Post Graduate qualifications after the amendment in 1989 to the regulations.

13. At this stage, I deem it proper to first consider various orders which had been passed by this Court in various proceedings taken up by various doctors. There are several orders but suffice to say that all those orders are only noticing the circulars issued either by the Central Council of Indian Medicine, the State of Bihar, the Government of India and their interplay. None of those have touched upon the interpretation to the rules which were statutory rules as at no earlier point of time any of those Courts were invited to interpret them.

14. In my view, those decisions of this Court have to be limited and restricted to the facts of those cases, which may be required to be gone into again upon the interpretation of the statute, with which the circulars of one or the executive authority may or may not be consistent. The legal issue being decided consequences would follow upon the facts of the individual cases notwithstanding earlier orders in such circumstances.

15. The Parliament enacted and enforced the Indian Medicine Central Council Act, 1970 (Act No.48 of 1970) to provide for the constitution of a Central Council of Indian

Medicine and maintenance of a central register of Indian Medicine and for matters connected therewith. Indian Medicine in terms of Section-1 (e) meant system of Indian Medicine commonly known as Ashtang Ayurveda, Siddha or Unani or Tibb. The Central Council under Section-1 (c) means the Central Council of Indian Medicine constituted under Section-3 of the Act. In terms of Section-1 (g) "prescribed" means prescribed by regulation. In terms of Section-1 (h) "recognized medical qualification" means any of medical qualification including Post Graduate medical qualification of Indian Medicine included in the second, third or fourth Schedule to the Act. Section-22 of the Act, inter alia, empowers the Central Council to prescribe the minimum standards of education in Indian medicine required for granting recognized medical qualification by Universities, Boards or medical institutions in India. Section-36 confers powers on the Central Council to frame regulations with the previous sanction of the Central Government by notifications, inter alia, to carry out the purposes of the Act and, in particular, with regard to course of study proficiency therein, standards of staff, equipment etc.

16. It appears that on 15th of May, 1986, the Central Council of Indian Medicine with previous sanction of the Central Government and superseding all previous regulations except for

anything done or omitted to be done before such supersession framed and notified the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) Regulations, 1986 (hereinafter 1986 regulations for brevity), which was notified in Gazette of India on 31st of May, 1986. Regulation 5 of these regulations provided for minimum standards for Ayurvedacharya course, which is specified in Schedule-1, the object whereof is to produce graduates of profound scholarship, having a deep basis for Ayurved, with scientific knowledge who would be able and efficient teachers, research workers, physicians and surgeons. In Schedule-1, apart from other things, there is prescribed qualification for teaching staff which is quoted hereunder:-

> "13. Qualifications prescribed for Teaching Staff:
> Essential :
> (a) Degree/diploma in Ayurved from a University established by law or a statutory Board/ Faculty/Examining Body of Indian Medicine or equivalent.
>
> OR
>
> Ayurvedacharya of All India Ayurved Vidyapeeth.
>
> OR
>
> Other eminent Ayurvedic scholars of established repute though not having any degree/diploma, but fit for teaching Ayurvedic subjects.
>
> (b) Teaching experience in any institution for ten years, five years and three years for the post of Professor, Reader and Lecturer respectively.

(c) Knowledge of Sanskrit.

Desirable:

(a) Post-graduate qualification in Ayurved from a recognized institution/university established by law.

(b) Original published papers/books on the subject."

17. From the aforesaid 1986 regulations, it is clear that for teaching graduate course, the teaching staff had to have certain qualifications and experience as noted above. One thing is important. It clearly specifies that the teaching staff should desirably have Post Graduate qualification from a recognized institution/university established by law. It was not mandatory but envisages the clear intention of the Central Council of Indian Medicine to enhance the educational qualification to Post Graduate level in respect of teachers which clearly includes Lecturers, Readers and Professors. It gives clear indication to all teachers about desirability of enhancing their educational qualification suitably notwithstanding that they are to teach undergraduate or graduate students.

18. Now, we come to the amendment made to the regulations in 1989. These regulations were notified on 05th of August, 1989 in the Gazette of India and had been issued by the Central Council of Indian Medicine with the previous sanction of the Central Government on 30thof July, 1989. By these

regulations Schedule-1 of the 1986 regulations was substituted. We are concerned with Clause-14 of the 1989 amendment regulations, which provides for qualification and experience of teaching staff, which is quoted hereunder:-

"14. Qualifications and experience for teaching staff:

(Applicable for recruitments made after 1st July, 1989)

(i) Essential:

(a) A degree in Ayurved from a University established by law or a Statutory Board/Faculty, Examining Body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970.

(b) A post-graduate qualification in the subject/specialty concerned included in the schedule to Indian Medicine Central Council Act, 1970.

(c) Adequate knowledge of Sanskrit.

(ii) Experience:

(a) For the post of Professor- Total teaching experience of ten years in the Department is necessary out of which there should be five years teaching experience as Reader/Asstt. Professor or ten years experience as a Lecturer in the concerned subject wherever the posts of Reader /Asstt. Professor do not exist.

(b) For the post of Reader- Total teaching experience of five years in the subject is necessary out of which there should be three years teaching experience as Lecturer in the subject

concerned.

(c) For the post of Lecturer- No teaching experience is required.

(iii) Desirable

Original published papers books on the subject."

19. Here, it may be noted that there was a conscious departure from the earlier 1986 regulations where Post Graduate degree was merely desirable. In these 1989 regulations what is desirable is only original published paper books on the subject but, in the essential qualification, a degree and a Post Graduate qualification in the subject/specialty concerned have been now provided. It is made applicable for all recruitment to be made after 1st of July, 1989. It is the effect of this amendment that is questioned.

20. My simple understanding of this Clause-14 read as a whole is that anyone who has to be considered for appointment to the post of Lecturer, Reader or Professor after 1st of July, 1989 has to comply with the essentialities and experience as now provided under the 1989 regulations. The exception would be that a person who had earlier been recruited as a Lecturer or as a Reader or as a Professor prior to 1989 who could have been a non Post Graduate but now and henceforth a non Post Graduate could not be recruited or brought in on the aforesaid three posts.

The PG qualification has now become essential and hence mandatory.

21. In my view, the circulars that had been issued by the Government of India on 28.04.1997 and on 01.02.2006 were correct and consistent with the 1989 amended regulations and the circular of the Central Council of Indian Medicine dated 03.06.1991 and the withdrawal of Government of India's earlier circular by circular dated 05.03.2008 was clearly wrong. The circular of the State Government dated 19.06.1991 was correct and consistent with the 1989 amendment of the Regulation and its withdrawal on 29.03.1996 was erroneous. I will come to the discussion with the case laws on this aspect after completing the sequence of regulations.

22. Now, we may refer to the Indian Medicine Central Council (Minimum Standards of Education in Indian Medicine) (Amendment) Regulations, 2012, which were issued with the previous sanction of the Central Government on 25.04.2012 and notified on 26thof July, 2012, whereby the Schedule-1 was again substituted. In these 2012 regulations, we would be concerned only with Clause-12 thereof, which is quoted hereunder:-

> "12. Qualifications & Experience for teaching staff for UG teachers:

(Applicable for direct recruitment but age will be relaxed in case of promotion)

(i) Essential :

(a) A degree in Ayurved from a University established by law or a statutory Board/Faculty/ Examining Body of Indian Medicine or its equivalent as recognized under Indian Medicine Central Council Act, 1970.

(b) A Post-graduate qualification in the subject/specialty concerned included in the schedule to Indian Medicine Central Council Act, 1970.

(ii) Experience:

(a) For the Post of Professor: Total teaching experience of ten years in concerned subject is necessary out of which there should be five years teaching experience as Reader/Associate Professor in concerned subject.

(b) For the post of Associate Professor (Reader): Teaching experience of five years in concerned subject. (Reader will be treated as Associate Professor).

(c) For the Post of Asst. Professor (Lecturer): (age not exceeding 40 years). No teaching experience is required. Lecturer will be treated as Asst. Professor.

(d) Qualification for the post of Head of the Institution (Principal/Dean/Director): The qualification and experience prescribed for the Post of Professor shall be essential for these posts.

Note:- In absence of the candidate of Post-

graduate qualification in concern subject the candidate of the following subjects as mentioned against them shall be eligible for the post of Lecturer/Asst. Professor:-

Speciality required	**Name of the allied subject.**
1. Swastha Vritta	1. Kayachikitsa
2. Agadtantra	2. Dravyaguna/Rasashastra
3. Rog vigyan	3. Kayachikitsa
4. Rachna Sharir	4. Shalya
5. Kriya Sharir	5. Samhita Siddhant
6. Shalakya	6. Shalya
7. Panchkarma	7. Kayachikitsa
8. Balroga	8. Prasuti & Striroga/ Kayachikitsa
9. Kayachikitsa	9. Manasroga
10. Shalya	10. Nischetana evam Ksha-Kirana.

a. The above provision of allied subject will be allowed for five years.
b. The teacher (s) who had been considered eligible in the past on the basis of previous Regulations shall not be considered ineligible on the basis of amendment."

23. If we see the 2012 regulations, now, it would be found that for teachers teaching under graduate courses, once again it is provided that the essential qualification would be a degree and a Post Graduate qualification in the subject/specialty concerned with experience as stated therein. In these regulations the nomenclatures have been changed. Lecturers are now to be known as Assistant Professor, Readers as Associate Professors and it is further provided by Clause-12 (ii) (d) that the qualification for the Head of the Institution (Principal/Dean/Director) would be the qualification and

experience prescribed for the post of Professor.

24. Sri Rajendra Narayan, learned senior counsel in support of the cause of the non Post Graduate teachers, lays much emphasis on Clause-(b) to the Note appended to Clause-12 as noted above to argue that teachers who were eligible in the past on the basis of previous regulation i.e. teachers who were not required to be Post Graduate under 1986 regulations shall not be considered ineligible on the basis of the amendment. According to the learned senior counsel, this would mean that if a person had been duly appointed as a Lecturer prior to 1989 regulations, when Post Graduate degree was only desirable, would they not only be competent to continue as such but would also be entitled to be considered for promotion to the post of Reader or Professor and would not be ineligible for those posts notwithstanding he not having the essential qualification of Post Graduate degree in the concerned subject. I regret my inability to accept this submission. The reason is simple. This Clause-(b) is an appendage to the Note to Clause-12 of the 2012 regulations. If we look to the context of the Note it clearly refers to the candidate for the post of Lecturer/Assistant Professor and nothing more. Therefore, when the Note itself is dealing with the singular post of Lecturer/Assistant Professor we cannot extend the relaxation as

contained in Clause (b) of the Note beyond its context which is Lecturer. It cannot for the said simple reason be extended to the post of Reader and/or the Professor where these regulations itself provide essentiality of Post Graduate degree in the required subject. The relaxation as given by the Note is only in respect of Lecturers/Assistant Professors and by no means it can be stretched to the post of Reader and/or Professor.

25. Now, if we see the progression of the three regulations, i.e., 1986 regulations, 1989 regulations and the 2012 regulations, the intent and the scheme is clear. In the 1986 regulations Post Graduate degree is made desirable. An intention is made known to everybody of desirability of enhancing their educational qualification. This intention is then made essential in the 1989 regulations even with respect to Lecturers what to talk of Readers and Professors and this is by no way diluted by the 2012 regulations, which maintained the essentiality of having Post Graduate degree to be a part of the teaching staff. The only relaxation that can be seen in the 2012 regulation is in respect of Lecturers/Assistant Professors and that too when candidates of Post Graduate qualifications are not available. Clause (b) to the Note is only a saving provision for teachers under the Note which deals with Lecturers/Assistant Professors only. Thus Lecturers

who were appointed prior to 1st of July, 1989 when the essentiality of Post Graduate was only desirable would not become ineligible because of the essentiality clause of having a Post Graduate qualification. It does nothing more.

26. In my view, for anyone today or for that matter after 1989 to be recruited or promoted to the post of Reader or Professor or for that matter Head of the Institution, Post Graduate qualification in the concerned subject is essential educational qualification and in absence thereof the person would be ineligible for consideration of those posts of Reader, Professor or Head of the Institution. Accordingly, after 1st of July, 1989 no one can be made Reader, Professor or Head of the Institution which would imply any college even in matters of under graduate teaching who does not possess Post Graduate degree. All promotions and appointments made contrary to this would be in direct conflict with the regulations illegal and unenforceable.

27. In fairness to Sri Rajendra Narayan, learned senior counsel, I must note his other submissions as well. He submits that by dint of their long experience and seniority the non Post Graduate teachers, in so far as under graduate courses are concerned, have to be considered for the post of Reader and Professor. In my view, the argument is noted only to be rejected.

The essentiality of minimum educational qualifications is an eligibility criteria and in absence whereof the person is ineligible for any consideration. The regulations do not take into consideration seniority or experience *de hors* essential eligibility.

28. I may only refer to some decisions of the Apex Court in these regards. In this connection, I may first refer to what was said by the Apex Court in the case **R. Prabha devi & Ors. Vs. Government of India through Secretary, Ministry of Personnel and Training, Administrative Reforms & Ors.** since reported in **(1988) 2 SCC 233** and, in particular in paragraphs-15 & 16, which is quoted hereunder:-

> "15. The rule-making authority is competent to frame rules laying down eligibility condition for promotion to a higher post. When such an eligibility condition has been laid down by service rules, it cannot be said that a direct recruit who is senior to the promotees is not required to comply with the eligibility condition and he is entitled to be considered for promotion to the higher post merely on the basis of his seniority. The amended rule in question has specified a period of eight years' approved service in the grade of Section Officer as a condition of eligibility for being considered for promotion to Grade I post of CSS. This rule is equally applicable to both the direct recruit Section Officers as well as the promotee Section Officers. The

submission that a senior Section Officer has a right to be considered for promotion to Grade I post when his juniors who have fulfilled the eligibility condition are being considered for promotion to the higher post, Grade I, is wholly unsustainable. The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the rule-making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor it can override it in the matter of promotion to the next higher post. The rule in question which prescribes an uniform period of qualified service cannot be said to be arbitrary or unjust violative of Article 14 or 16 of the Constitution. It has been rightly held by the Tribunal:

"When certain length of service in a particular cadre can validly be

> prescribed and is so prescribed, unless a person possesses that qualification, he cannot be considered eligible for appointment. There is no law which lays down that a senior in service would automatically be eligible for promotion. Seniority by itself does not outweigh experience."

16. It has also been observed:

> "In any event, the appropriate rule-making authority is the best judge in this regard. The rule-making authority is certainly competent to amend the rule and extend the period from six years to eight years so as to make the direct recruits more experienced and suitable for the higher post. That is a matter for the rule-making authority; the Tribunal cannot sit in judgment over the opinion of the rule-making authority. No court or Tribunal can substitute its own view in a matter such as this. Such a rule framed by a competent authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution."

29. I may then refer the judgment in the case of **State of M.P & Anr. Vs. Dharam Bir** since reported in **(1998) 6 SCC 165**. In this case, after rejecting the plea of "human approach" not to disturb a person working on a post for long time and rejecting the emotional appeal the Apex Court held thus:-

> "31. …….The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration

that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

32. "Experience" gained by the respondent on account of his working on the post in question for over a decade cannot be equated with educational qualifications required to be possessed by a candidate as a condition of eligibility for promotion to higher posts. ……..

30. I may then usefully refer to the judgment in the case of **State of J&K Vs. Shiv Ram Sharma** since reported in **(1999) 3 SCC 653** and in particular at paragraph-6, which is quoted hereunder:-

"6. The law is well settled that it is permissible for the Government to prescribe appropriate qualifications in the matter of appointment or promotion to different posts. The case put forth on behalf of the respondents is that when they joined the service, the requirement of passing matriculation was not needed and while they are in service, such prescription has been made to their detriment. But it is clear that there is no indefeasible right in the respondents to claim for promotion to a higher grade to which qualification could be prescribed and there is no guarantee that those rules framed by the Government in that

behalf would always be favourable to them. In *Roshan Lal Tandon* v. *Union of India* it was held by this Court that once appointed, an employee has no vested right in regard to the terms of service but acquires a status and, therefore, the rights and obligations thereto are no longer determined by the consent of the parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. The High Court has also noticed that there was an avenue provided for promotion but the prescription of the qualification was not favourable to the respondents. The principle of avoiding stagnation in a particular post will not be with reference to a particular individual employee but with reference to the conditions of service as such. As long as the rules provide for conditions of service making an avenue for promotion to higher grades, the observations made in *T.R. Kothandaraman case* stand fulfilled. In that view of the matter, we do not think the High Court was justified in allowing the writ petitions filed by the respondents."

31. It has been observed by the Apex Court in the case of **State of J&K Vs. Triloki Nath Khosa** since reported in **(1974) 1 SCC 19** that "higher educational qualifications are at least presumptive evidence of a higher mental equipment" are that "efficiency which comes in the control of a higher mental equipment can reasonably be admitted to be achieved by

restricting promotional opportunity to those possessing higher educational qualifications".

32. Thus seen, on the plain interpretation of the regulations as also in view of the law as laid down by the Apex Court in the four decisions aforesaid, none of the pleas as raised in favour of the non Post Graduate teachers is acceptable nor they are entitled to be promoted to the post of Reader, Professor or Head of the Institution. They have no option but to obtain Post Graduate degrees as required by the regulations. Both the non Post Graduate doctors/teachers, i.e., Dr. Deovrat Narayan Singh and Dr. Saroj Kumar Mishra are seeking their promotion to the post of Reader and further long after the 1989 regulations, without acquiring Post Graduate qualifications. They cannot legitimately claim the same. In fact, they cannot go beyond the post of Lecturer irrespective of their long service and seniority. The contentions on their behalf thus fail. The other group of four doctors/teachers having Post Graduate qualification must succeed. They are entitled to be considered for promotion to the post of Reader, Lecturer or Head of the Institution from their respective due dates ignoring the non Post Graduate teachers.

33. It would thus now be for the State Government to immediately reconsider all matters of promotion to the post of

Reader, Professor and Head of the Institutions in Ayurvedic Colleges accordingly, which should be promptly done in view of the law laid down above by this Court. It goes without saying that any decision taken contrary to law, as indicated above by this Court, would be required to be recalled forthwith and any stay obtaining in these matters would stand vacated forthwith.

34. With the aforesaid observations and directions, these writ petitions are disposed of.

(Navaniti Prasad Singh, J.)

Trivedi/AFR

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